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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twentieth session

SUMMARY RECORD OF THE 3rd MEETING*

Held at the Palais des Nations, Geneva,
on Tuesday, 27 April 1999, at 10 a.m.

Chairperson: Mrs. BONOAN-DANDAN

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* No summary record was prepared for the 2nd meeting.

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS

(b) REPORTS SUBMITTED BY SPECIALIZED AGENCIES IN ACCORDANCE WITH ARTICLE 18 OF THE COVENANT (agenda item 8)

- International Labour Organization (ILO)

1. Ms. THOMAS (International Labour Organization), supplementing the information provided to the Committee at its nineteenth session on the implementation of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, notably the right of association, forced labour, child labour and discrimination in employment, said that the International Labour Organization (ILO) had decided to request States parties to submit to it two types of report on the progress achieved in implementing the ILO Conventions, depending on whether or not they had ratified the seven ILO Conventions deemed to be fundamental.

2. The ILO had created an expert group to study States parties' reports on implementation of the Declaration and had allocated substantial funds for promoting implementation of the conventions with which it dealt mainly through technical cooperation. Lastly, it had decided to pursue the campaign for ratification of its conventions, which had recently culminated in the ratification of ILO Convention No. 111 concerning Discrimination in respect of Employment and Occupation by the United Kingdom and Ireland, and of the seven fundamental conventions by Indonesia.

3. She summarized briefly the main observations of the ILO supervisory bodies which were of interest to the Committee and which appeared in the ILO's twenty-seventh report on the progress made in achieving the observance of the provisions of the Covenant falling within the scope of the ILO's activities, submitted under article 18 of the Covenant.

4. With regard to Denmark's implementation of article 6 of the Covenant, the ILO Committee of Experts had noted the adoption by the State party of new legislation prohibiting discrimination on the labour market, in order to give full effect to ILO Convention No. 111 concerning Discrimination in respect of Employment and Occupation. In 1997, Denmark had also enacted Act No. 286 prohibiting the use of information on the status of an employee's health for the purpose of jeopardizing his or her employment.

5. With regard to Denmark's implementation of article 8, the ILO Committee on Freedom of Association, after examining petition No. 1950 lodged by the Danish Union of Teachers, had concluded that Danish teachers could not be classed as providers of essential services who, as such, could be subject to restrictions on the exercise of the right to strike. At the same time, on the subject of the right of non-resident seafarers to be represented by organizations of their own choosing, the Committee of Experts had noted with satisfaction that a temporary agreement concerning their protection had been reached with some Danish seafarers' organizations.

6. On the subject of implementation of article 8 of the Covenant in Iceland, the Committee of Experts had noted, for purposes of ILO Convention No. 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, that the Icelandic authorities had recently desisted from intervening in collective bargaining.

7. Regarding Ireland's implementation of article 6 concerning the abolition of forced labour, the Committee of Experts had noted that the authorities planned shortly to amend the provisions of Irish legislation governing merchant shipping which provided that certain sanctions, including forced labour, could be imposed as a disciplinary measure on seafarers. The Committee of Experts had asked the Government to provide it, for purposes of implementing ILO Convention No. 122 concerning Employment Policy, with additional information on the elements of its general policy which might have a negative effect on employment. In that connection, she said that Ireland had ratified ILO Convention No. 111 in April 1999 and had decided to raise the minimum age of admission to employment from 15 to 16.

8. Concerning Tunisia's implementation of article 6 of the Covenant, the Committee of Experts was disturbed by the restrictions placed by the Government on the provisions of ILO Convention No. 105 concerning the Abolition of Forced Labour, which protected persons who expressed opposition to the established political order, and by the measures in Tunisia that could expose persons participating in an illegal strike to forced labour.

9. With regard to article 10, the Committee of Experts had noted with concern that the minimum age for admission to employment, set at 16 by Tunisia, applied only to salaried employment and did not include other types of employment prohibited by ILO Convention No. 138 concerning Minimum Age for Admission to Employment.

10. The CHAIRPERSON invited Committee members to put questions to the ILO representative.

11. Mr. RIEDEL asked the ILO representative whether the ILO still viewed Iceland's implementation of Convention No. 98 with concern.

12. Ms. THOMAS (International Labour Organization) said that, while implementation of that Convention in Iceland no longer appeared to be problematic, the ILO was continuing to monitor developments.

13. Mr. WIMER inquired which fundamental ILO Conventions had not been ratified by Ireland and Iceland.

14. Mr. HUNT asked what was the difference between the supervisory and promotion mechanisms employed by the ILO to ensure implementation of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up.

15. Mr. ANTANOVICH thanked the ILO representative for the interesting and detailed information she had conveyed to Committee members. He felt, however, that it would be even more useful if at each session it covered countries whose reports were being examined by the Committee. Would that be possible in future?

16. Mr. TEXIER warmly thanked the ILO for participating in the Committee's deliberations. He regretted, however, that not all the specialized agencies did so, in order to assist the Committee in its consideration of States party reports, in compliance with article 18 of the Covenant. It would also be useful if the Committee, like the International Labour Conference, which had adopted a hard core of rights concerning prohibition of forced labour and child labour, attempted to define a minimum incompressible content of economic, social and cultural rights which would be binding on all States parties. Did Mrs. Thomas have any views on the matter?

17. Mr. AHMED warmly thanked the ILO representative for the interesting and useful information with which she had supplied the Committee. He hoped that the initiative would not be short-lived and that her organization would continue to give Committee members the benefit of its specialized knowledge in the Committee's fields of competence.

18. Ms. JIMENEZ BUTRAGUEÑO asked in what form and through what projects, activities or studies the ILO intended to draw attention to the very disturbing situation of elderly persons in the world of work, in the context of the International Year of Older Persons.

19. Mr. SADI said it would be useful to know what measures the ILO and the States parties were taking to inform workers of their rights under the ILO Conventions. Were they conducting awareness-raising activities and information campaigns?

20. Mr. RIEDEL noted from the ILO report, regarding implementation of article 8 of the Covenant and of ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise, that the Committee of Experts had requested the Tunisian Government to consider repealing the provisions that obliged trades union to obtain prior authorization from the authorities to conduct their activities. He was at a loss to understand why the Government should adopt such a measure.

21. Ms. THOMAS (International Labour Organization) said that Iceland had ratified all the fundamental ILO Conventions with the exception of Convention No. 138 concerning Minimum Age for Admission to Employment. Ireland, for its part, had ratified all the fundamental Conventions.

22. As far as the distinction between the supervisory and promotion mechanisms for application of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up was concerned, she explained that the ILO was endeavouring to define a method that would place greater emphasis on coordination, cooperation, complementarity and political will than on purely legal obligations; however, it was a protracted and complex procedure.

23. The International Labour Office was prepared to furnish the Committee with more detailed country information, not including information already contained in State party reports. She supposed that the best method would be for Committee members to refer to the observations formulated by the Committee of Experts on matters of interest to it and, if necessary, request additional information of the ILO.

24. With regard to the definition of minimum rights, the ILO was aware of the need to ensure that rights thus defined were clearly seen as a starting point for implementation of new rights enshrined in other ILO Conventions, and not as a permanent norm. Should the Committee also decide to define certain economic, social and cultural rights as constituting a minimum that States parties would be obliged to respect, it must beware in so doing, of jeopardizing the implementation of other rights.

25. As to the ILO's participation in the celebration of the International Year of Older Persons, she believed that the ILO had conducted a few studies on the status of elderly persons, although it was not one of its special fields of activity. She would try to provide the Committee with fuller information on the matter.

26. Workers were informed of their rights, depending on the case, by the supervisory bodies established in the various ILO Conventions, by the workers' information service of the International Labour Office and by numerous workers' information programmes in the field, especially in the developing countries and those whose trade-union organizations did not provide their members and other workers with information on the international provisions protecting their rights.

27. With regard to Tunisia's implementation of ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise, she was not in a position to provide the Committee with more precise information. She pointed out, however, that the absence of complaints from trade-union organizations did not necessarily mean that they accepted the system imposed on them.

28. Ms. JIMENEZ BUTRAGUEÑO expressed great interest in the study conducted in 1998 on the status of elderly persons and asked whether it would be possible to have a copy.

29. Mr. RIEDEL said that the notion of essential rights was fundamental to the current debate on the optional protocol. The concept was certainly a useful one for the ILO, allowing it as it did to set reference points, given the large number of conventions and recommendations in existence. However, in the case of the International Covenant on Economic, Social and Cultural Rights, it should beware lest the adoption of an optional protocol should lead to the neglect of important rights, unless a minimum fundamental content was defined.

30. Mr. WIMER said that Mr. Antanovich's proposal was opportune inasmuch as it could be relayed by the ILO representative. Reports submitted by countries certainly addressed subjects of concern to the ILO; however, it would be a good idea to have at the same time, for each country whose report was under consideration, a brief written report from the ILO stating its views on that country's observance or otherwise of its commitments.

31. Ms. THOMAS (International Labour Organization) replied that the ILO would endeavour to take that request into consideration.

32. The CHAIRPERSON thanked Ms. Thomas for her contribution to the Committee's deliberations and for her answers to its questions. Returning to what Mr. Texier had said concerning the definition of an incompressible minimum content of the articles of the Covenant, she requested the Committee to think about the matter throughout the session. Work had already been undertaken externally to attempt to define that minimum content; the Committee could also make its contribution in that regard, for instance within the framework of the workshop to be devoted to indicators on the right to education.

33. She also recalled that in December 1998 it had been decided to conduct, in collaboration with the Office of the United Nations High Commissioner for Human Rights, a study on the system for United Nations bodies' follow-up of international human rights instruments. One of the persons entrusted with that study should be reporting on it to the Committee at a forthcoming meeting. The purpose of the study was to provide the Office of the High Commissioner with a detailed analysis of the manner in which the system operated within the United Nations and outside it.

34. Mr. ANTANOVICH drew Committee members' attention to two subjects of concern. First, given the huge disparities in the various countries' economic, social and cultural situation, a regional approach would be the best way of tackling the problem of the enjoyment of rights in those fields. Secondly, the Committee would sooner or later have to address the question of reform of the system for monitoring enforcement of international instruments and presentation of reports, including the financial considerations connected with the preparation of those reports. In his view, a reform of the system should tend, rather, towards reinforcement of the obligations incumbent upon Governments. He had noted that they tended to submit their reports late or be less than punctilious in their preparation. Any overhaul of the system should also aim at determining how the countries perceived and actually applied the recommendations made to them by the Committee.

35. Mr. TIKHONOV (Secretary of the Committee) called members' attention to a number of publications concerning the draft general observations on the right to food, the right to education and the right to health, which could be consulted at the secretariat by all interested persons.

The meeting was suspended at 11.25 a.m. and resumed at 12.05 p.m.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (item 8 of the agenda)

Second periodic report of Iceland [(E/1990/6/Add.15); List of issues (E/C.12/Q/ICE/1); Written replies by the Icelandic Government (HR/CESCR/0/1999/2)]

36. At the invitation of the Chairperson, the members of the delegation of Iceland took places at the Committee table.

37. The CHAIRPERSON invited Committee members to put their questions to the Icelandic delegation.

General framework within which the Covenant is implemented

38. Mr. SADI expressed surprise that, in its written replies to item 2 on the list of issues, the Icelandic Government had declared that there was no conflict between Icelandic legislation and the provisions of the International Covenant on Economic, Social and Cultural Rights. He asked the delegation whether that statement was accurate and whether that was why the Government did not deem it necessary to incorporate the Covenant in the domestic legislation.

39. Mr. PILLAY said that he, too, wondered about the place of the Covenant in Icelandic law. He observed that certain provisions had been incorporated in the Constitution, but that most economic, social and cultural rights were not explicitly defined therein, with the exception of the right to social security and the right to education, whereas civil and political rights were specifically enshrined in the law amending the provisions of the Constitution relating to human rights. In that connection, he recalled that the Committee, in the observations it had formulated in 1993 on the initial report of Iceland (E/1999/5/Add.6 and 14), had recommended that both international human rights Covenants be treated equally (E/1994/23-E/C.12/1993/19). He would also welcome specific examples of decisions taken by the Supreme Court in cases relating to enforcement of economic, social and cultural rights. Referring to item 4 on the list of issues, to which the delegation had replied in part, he asked whether members of the judiciary were familiar with the provisions of the Covenant, notably the Committee's General Comment No. 9 concerning the obligation to give effect to the Covenant in domestic legislation.

40. Mr. TEXIER welcomed the fact that, judging from the large number of women in the Icelandic delegation, the problem of equality between men and women had been settled. He wished to know why, given the indivisibility of human rights, and despite the insistence of many non-governmental organizations, the 1995 constitutional amendment had assigned a less important place to economic, social and cultural rights than to civil and political rights. Did the Icelandic authorities consider that it was more difficult to uphold the former in the courts than the latter?

41. Mr. WIMER, having read paragraph 3 of the written replies of the Icelandic Government to item 2 on the list of issues, asked what were the legal, political and social reasons why the Covenant possessed a status inferior to that of the European Convention on Human Rights and could not, therefore, be invoked before the courts as an integral part of domestic legislation.

42. Mr. RIEDEL, referring to the written replies to item 3 on the list of issues, pointed out that the application of economic, social and cultural rights was of great importance to the Committee, not only because of the indivisibility of human rights, but also with a view to the preparation of an optional protocol to the Covenant. He inquired what had occurred following the plan to appoint a special committee to examine the possibility of

incorporating both human rights Covenants in Icelandic legislation. Did the Government intend to appoint a human rights ombudsman or a national high commissioner for human rights?

43. Mr. ANTANOVICH asked the delegation to provide specific examples of the enforcement of economic, social and cultural rights prior and subsequent to the adoption of the constitutional amendment, in response to item 8 on the list of issues.

44. Mr. AHMED thanked the delegation for the very full information it had supplied to the Committee. He would like to know why the authorities had not appointed the special committee to examine the possibility of incorporating the two Covenants in Icelandic legislation. It seemed to him that such incorporation might be all the easier since the Covenants were widely invoked by the courts, and it would also serve to settle any problems of interpretation.

45. Mr. TEXIER inquired what share of the State budget was devoted to cooperation with the developing countries, particularly with a view to helping them enforce economic, social and cultural rights.

46. Ms. ARNLJÓTSDÓTTIR (Iceland) replied that the Icelandic authorities attached the utmost importance to the Covenant and had included many of its provisions, especially those regarding social security and the rights of patients, in the domestic legislation. The Ministry of Justice had studied the question of incorporating the Covenant in Icelandic law in the light of developments in the other Nordic countries. The situation could well evolve in future, especially since Norway had submitted a bill on the question.

Article 2.2: Non-discrimination

47. Mr. WIMER expressed surprise at the small number of foreigners living in Iceland - under 6,000 as at 1 December 1997. How many were migrant workers? Had there been any cases of conflict with the State because of their presence?

48. Mr. HUNT applauded the incorporation of the European Convention on Human Rights in Icelandic law and encouraged the Government to do the same with regard to the Covenant. That being said, whether or not the Covenant was incorporated in the domestic legislation, the Icelandic Government was, in international terms, bound by the obligations it imposed. How did the country ensure that the provisions of the Covenant were taken into account when new national policy was being framed? In other words, was there an official or informal mechanism for verifying that the decision-making process took due account of the obligations incumbent on the Government under the Covenant? If there was, was it a central body or a department within each ministry?

49. Ms. ARNLJÓTSDÓTTIR (Iceland) replied that there was no such central organ, but that the authorities, at both the government and ministerial level, ensured that the provisions of the Covenant were taken into account in the formulation of a policy or the preparation of a bill. There was also a parliamentary ombudsman who saw to it that human rights were taken into account in bills submitted to parliament.

Article 3: Equality between men and women

50. Mr. CEAUSU said that the Icelandic Government was obviously not satisfied with the progress made towards achieving equality between men and women, despite all the legislation adopted and, particularly, despite the creation in 1991 of the Equal Status of Complaints Committee. However, considering that that committee's conclusions were not binding upon the parties and that it was the committee, and not the person concerned, that could bring legal action in court against an employer on account of discrimination, one could only wonder about that organ's capacity to effectively monitor observance of the law.

51. Mr. PILLAY said he was astonished that, despite the existence of a plethora of legal weapons designed to protect women's rights, there still appeared to be wage disparities between men and women, mainly in the public sector. He found it perplexing that the Government failed to apply the legislation it had itself adopted. Why was no action taken, either by the trades union or by the women concerned, to induce the Government to remedy the situation?

52. Mr. ANTANOVICH said that the reply on item 10 contained a highly detailed description of the methods of law enforcement. However, it would have been more interesting to discover what were the main outstanding problems with regard to equality between the sexes and whether the committees on equality of rights, established in each municipality with over 500 inhabitants, were capable of solving them.

The meeting rose at 1 p.m.